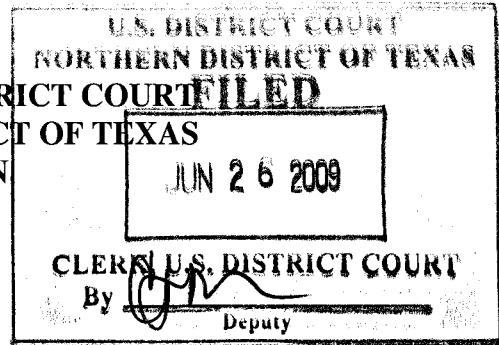


IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



PETER DAVID WINEGARNER,
Plaintiff,

v.

CINEMARK USA, Movie Theaters, Inc.,
et al.,
Defendants.

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3:08-CV-2232-N

**ORDER ACCEPTING FINDINGS AND RECOMMENDATION OF
THE UNITED STATES MAGISTRATE JUDGE**

On May 8, 2009, the United States Magistrate Judge filed findings, conclusions and a recommendation in this case. Plaintiff filed his objection on May 26, 2009, which he styled as a "Reply to Findings, Conclusions and Recommendation . . . *and* Second Amended Original Filing" (Emphasis added). The District Court has made a *de novo* review of those portions of the proposed findings and recommendation to which objection was made. The objections are overruled. The Court ACCEPTS the Findings, Conclusions and Recommendation of the United States Magistrate Judge and GRANTS Plaintiff leave to file a first amended complaint in compliance with Fed. R. Civ. P. 8(a) to allege all claims and name all defendants, including Police Officer Ryan Maly and/or the City of Lewisville.¹ As noted in the recommendation, the Court cannot construe the Reply/Second Amended Filing as an amended complaint. As a result,

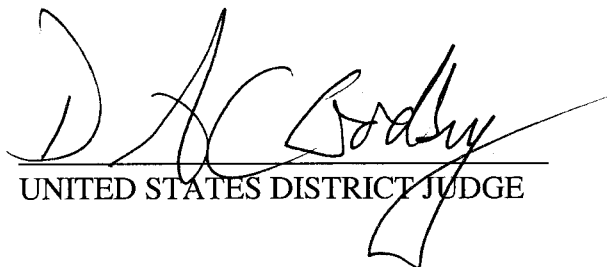
¹ In his objection, Plaintiff states that he is not seeking to sue the City of Lewisville, but only Police Officer Ryan Maly.

neither the City of Lewisville nor Detective Ryan Mally is presently a party in this case.²

IT IS THEREFORE ORDERED that Plaintiff will FILE his first amended complaint in compliance with Rule 8(a), on or before fifteen (15) days from the date of this order. Plaintiff is reminded that the first amended complaint should be a stand-alone, complete document and in compliance with Rule 8(a) of the Federal Rules of Civil Procedure. The first amended complaint should name all parties being sued and their addresses, and contain a jurisdictional statement as set out in Rule 8(a)(1). The first amended complaint should also include a brief statement setting out the facts in support of Plaintiff's claims against the Defendants. *See* Rule 8(a)(2). Lastly, the first amended complaint should set out the relief which Plaintiff seeks in this action. *See* Rule 8(a)(3).

Plaintiff is cautioned that the first amended complaint will replace and supersede the original complaint and all of Plaintiff's prior attempts to amend the complaint. As such the first amended complaint should not rely on allegations made or documents attached to the prior complaint or other pleadings filed in this case.

SO ORDERED this 26 day of June, 2009.


UNITED STATES DISTRICT JUDGE

² Plaintiff's attempt to serve summons on the "City of Lewisville Police Department Detective Ryan Maly" (*see* Doc. #18) was premature. Once a first amended complaint is filed in compliance with this order, Plaintiff will need to obtain issuance of summons from the Clerk's Office as to the City of Lewisville and/or Detective Ryan Maly, and effect service of process as required by Rule 4, of the Federal Rules of Civil Procedure.